

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

FOREST LABORATORIES, LLC, FOREST)	
LABORATORIES HOLDINGS, LTD.,)	
CEREXA, INC. and TAKEDA)	
PHARMACEUTICAL COMPANY)	
LIMITED)	
)	
Plaintiffs,)	
)	
v.)	C.A. No. 15-018 (GMS)
)	
APOTEX CORP., APOTEX INC. and)	
SANDOZ INC.,)	
)	
Defendants.)	

SCHEDULING ORDER

This _____ day of June 2015, the Court having received the required submissions from the parties under Rule 16 and Local Rule 16.2(b) and having conducted a telephone status conference with the parties on June 15, 2015, and the parties having determined after discussion that the matter cannot be resolved at this juncture by settlement, voluntary mediation or binding arbitration;

IT IS ORDERED that:

1. **Rule 26(a) Initial Disclosures.** Unless otherwise agreed to by the parties, they shall make their initial disclosures pursuant to Federal Rule of Civil Procedure 26(a) on or before June 24, 2015.
2. **Joinder of other Parties and Amendment of Pleadings.** All motions to join other parties and amend the pleadings shall be filed on or before February 3, 2016.
3. **Reliance Upon Advice of Counsel.** Not applicable.

4. **Markman Claim Construction Hearing.** A *Markman* claim construction hearing shall be held on July 6, 2016 at 9:30 a.m. The *Markman* hearing is scheduled for a total of 3 hours, with each side having 1.5 hours. The parties shall meet and confer regarding narrowing and reducing the number of claim construction issues. On or before April 13, 2016, the parties shall submit a Final Joint Claim Chart which shall include citations to intrinsic evidence. The plaintiff shall submit to the Court, a Joint Appendix of Intrinsic Evidence (the “Joint Appendix”) containing all intrinsic evidence relied upon in the claim construction briefing. A sample table of contents of the Joint Appendix can be located on this Court’s website at www.ded.uscourts.gov. The Joint Appendix shall be filed on the same day as the answering claim construction briefs. The parties shall file opening claim construction briefs on June 1, 2016, and answering claim construction briefs on June 22, 2016. Briefing will be presented pursuant to the court’s Local Rules. “The Court will not accept or consider any declarations in support of *Markman* briefing.” (See Court’s 6/15/15 Oral Order).

5. **Discovery.** All fact discovery in this case shall be initiated so that it will be completed on or before September 28, 2016. Opening expert reports on issues on which a party bears the burden of proof shall be served on or before October 26, 2016. Rebuttal expert reports shall be served on or before December 14, 2016. Reply expert reports shall be served on or before February 8, 2017. Expert discovery in this case shall be initiated so that it will be completed on or before April 19, 2017.

a. **Discovery and Scheduling Matters:** Should counsel find they are unable to resolve a discovery¹ or scheduling matter, the party seeking the relief shall contact Chambers

¹ Unless the Court otherwise orders, should counsel be unable to agree on the discovery of paper and electronic documents, the court's "Default Standard for Discovery, Including Discovery of Electronically Stored Information" ("ESI") shall govern.

at (302) 573-6470 to schedule a telephone conference. Not less than forty-eight hours prior to the teleconference, the parties shall file with the Court, via electronic means (CM/ECF), a **Joint Letter Agenda**, which is non-argumentative, not to exceed two (2) pages outlining the issue(s) in dispute. A sample letter can be located on this Court's website at www.ded.uscourts.gov. After the parties have had three (3) discovery teleconferences, they will be required to file a joint letter showing good cause why the Court should permit a fourth discovery teleconference. Should the Court find further briefing necessary upon conclusion of the telephone conference, unless otherwise directed, the party seeking relief shall file with the court a **TWO PAGE LETTER**, exclusive of exhibits, describing the issues in contention. The responding party shall file within five (5) days from the date of service of the opening letter an answering letter of no more than **TWO PAGES**. The party seeking relief may then file a reply letter of no more than **TWO PAGES** within three (3) days from the date of service of the answering letter.

6. **Confidential Information and Papers filed under Seal.** Should counsel find it will be necessary to apply to the Court for a protective order specifying terms and conditions for the disclosure of confidential information, they should confer and attempt to reach an agreement on a proposed form of order and submit it to the court within ten (10) days from the date of this order. When filing papers under seal, counsel should deliver to the Clerk an original and two copies of the papers.

If after making a diligent effort the parties are unable to agree on the contents of the joint proposed protective order, then they shall follow the dispute resolution process outlined in paragraph 5(a).

7. **Settlement Conference.** Pursuant to 28 U.S.C. §636, this matter is referred to the United States Magistrate Judge for the purpose of exploring the possibility of a settlement. The parties shall wait to be contacted by the assigned United States Magistrate Judge.

8. **Applications by Motion.** Except as provided in this Scheduling Order or for matters relating to scheduling, any application to the Court shall be by written motion filed, via electronic means (CM/ECF). Unless otherwise requested by the Court, counsel shall **not** deliver copies of papers or correspondence to Chambers. Any non-dispositive motion should contain the statement required by Local Rule 7.1.1.

9. **Oral Argument.** If the Court believes that oral argument is necessary, the Court will schedule a hearing Pursuant to District of Delaware Local Rule 7.1.4.

10. **Pretrial Conference.** On May 31, 2017, beginning at 10:00 a.m., the Court will hold a telephonic Pretrial Conference with counsel. Unless otherwise ordered by the Court, the parties should assume that filing the Joint Pretrial Order satisfies the pretrial disclosure requirement in Federal Rule of Civil Procedure 26(a)(3). A sample form of Pretrial Order can be located on this court's website at www.ded.uscourts.gov. Thirty (30) days before the Joint Proposed Pretrial Order is due, plaintiff's counsel shall forward to defendant's counsel a draft of the pretrial order containing the information plaintiff proposes to include in the draft. Defendant's counsel shall, in turn, provide to plaintiff's counsel any comments on the plaintiff's draft, as well as the information defendant proposes to include in the proposed pretrial order.

Motions in limine²: NO MOTIONS IN LIMINE SHALL BE FILED; instead, the parties shall be prepared to address their evidentiary issues at the Pretrial Conference and during trial

² The parties should simply list, in an Exhibit to be attached to the Pretrial order, the issues under a heading such as "Plaintiff's [name of party] List of Evidentiary Issues It Intends To Raise."

(before and after the trial day). The parties shall file with the court the **joint** Proposed Final Pretrial Order in accordance with the terms and with the information required by the form of Final Pretrial Order, which can be located on this Court's website at www.ded.uscourts.gov on or before May 17, 2017.

11. **Trial.** This matter is scheduled for a five-day bench trial beginning at 9:00 a.m. on June 12, 2017.

12. **Scheduling:** The Court further Orders the scheduling deadlines set forth in Exhibit A. The parties shall contact Chambers, at (302) 573-6470, only in situations where scheduling relief is sought, and only then when ALL participating counsel is on the line for purposes of selecting a new date.

UNITED STATES DISTRICT JUDGE

EXHIBIT A

Event	Deadline
Rule 26(a) Initial Disclosures	June 24, 2015
Delaware Default Standard ¶ 3 Disclosures	July 15, 2015
Delaware Default Standard ¶ 4(a) Disclosure	July 15, 2015
Delaware Default Standard ¶ 4(b) Disclosure <ul style="list-style-type: none"> Defendants produce ANDAs 	July 31, 2015
Production of samples of the accused products	August 12, 2015, or as soon thereafter as available
Production of samples of TEFLARO	August 12, 2015, or as soon thereafter as available
Delaware Default Standard ¶ 4(c) Disclosure	October 14, 2015
Delaware Default Standard ¶ 4(d) Disclosure	November 18, 2015
Deadline for motions to join additional parties	February 3, 2016
Deadline for motions to amend the pleadings	February 3, 2016
Exchange proposed terms for construction	March 2, 2016
Exchange proposed constructions	March 16, 2016
Submit Final Joint Claim Chart	April 13, 2016
Document production substantially complete	May 25, 2016
Simultaneous opening <i>Markman</i> briefs	June 1, 2016
Simultaneous answering <i>Markman</i> Briefs	June 22, 2016
Plaintiffs shall submit a joint appendix of intrinsic evidence	June 22, 2016
<i>Markman</i> hearing (3 hours)	July 6, 2016 at 9:30 a.m.
Close of fact discovery	September 28, 2016

Event	Deadline
Opening expert reports	October 26, 2016
Rebuttal expert reports	December 14, 2016
Reply expert reports	February 8, 2017
Close of expert discovery	April 19, 2017
Pretrial Order	May 17, 2017
Telephonic Pretrial Conference	May 31, 2017 at 10:00 a.m.
Start of Bench Trial (5 trial days)	June 12, 2017 at 9:00 a.m.